

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-37 are pending.

**Amendments to the Claims**

Claims 1-37 have been examined with no claims being allowed. Independent Claims 1, 15, and 27 have been amended to include the limitation of the color pigment being applied to a zone in a targeted elastic material that creates a visible perception of a discrete elastic band on the targeted elastic material where no actual elastic band is present on the targeted elastic material. Support for this limitation is provided, for example, on page 3, lines 15-21, and on page 4, lines 6-8, and page 24, lines 14-21. Claim 5 has been canceled. Dependent Claims 6, 13 and 20 have been amended for consistency with the other amendments.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims decreased by one.

**Claim Rejections - 35 U.S.C. §103**

The rejection of Claims 1-37 under 35 U.S.C. §103(a) as being unpatentable over Mathis et al. (U.S. Patent No. 5,680,653, hereinafter "Mathis") in view of Glaug et al. (U.S. Patent No. 6,478,786, hereinafter "Glaug") is respectfully traversed, particularly in view of the above Amendment and the following remarks.

As previously mentioned, the claims have been amended to include the limitation of the color pigment being applied to a zone in a targeted elastic material that creates a visible perception of a discrete elastic band on the substrate where no actual elastic band is present on the targeted elastic material.

The terms "targeted elastic regions" and "targeted elastic material" are defined on page 8 of the Application as follows:

The term “targeted elastic regions” refers to isolated, often relatively narrow bands or regions in a single composite material or layer, which have greater elastic tension than adjacent or surrounding regions.

The term “targeted elastic material” (“TEM”) refers to a single elastic material or laminate having targeted elastic regions. TEM’s include only materials or laminates which are made in a single manufacturing process, and which are capable of exhibiting targeted elastic properties without requiring an added elastic band or layer in the targeted elastic region. TEM’s do not include materials having elasticized regions achieved through separate manufacture of an elastic band, and subsequent connection of the elastic band to the underlying material. TEM’s include materials having apparent elastic bands as defined above.

Mathis discloses an elastic laminate suitable for use in forming a surgical gown cuff as shown in Figure 9 and the discussion in Col. 8, lines 52-62. The elastic laminate includes at least one stretchable layer and at least one elastic liquid barrier layer. The elastic laminate of Mathis is not a targeted elastic material.

On page 4 of the Office Action, the Examiner mentions that Mathis discloses a target elastic material. Applicants respectfully disagree. Mathis states “The elastic layer 24 may further overlie all or substantially all of the stretchable layer 22. The elastic layer 24 may also overlie selected portions of the stretchable layer 22. In the later instance, the resulting elastic laminate may include selected areas or zones of elasticity and permeability depending upon the elastic adhesive film forming the material selected.” (Col. 6, lines 26–31). The Examiner apparently interprets the “zones of elasticity and permeability” to necessarily imply that the laminate is a target elastic material. However, as the definition specifies above, a “targeted elastic material” includes only materials which do not require an added elastic band or layer in the targeted elastic region. In the Mathis example pointed out by the Examiner an added layer (elastic layer 24) is required to create what the Examiner terms the “high tension (elastic zones).” Therefore, this embodiment of the Mathis laminate is not targeted elastic material.

Glaug discloses protective underwear that may include at least some elastic fibers of either the front or back of the undergarment distinctively colored to be readily

discernable from the color of the chassis material, thereby enabling a person to readily determine which is the front and which is the rear of the undergarment so that it can be put on properly.

The term “elastic band” is defined on page 6 of the Application as follows:

The term “elastic band” refers to a discrete elongated element having elastic properties. The term “discrete elongated element” refers to a long, relatively narrow element that is separately manufactured and then attached to an underlying material, and does not include elongated regions having elastic properties that may be part of the underlying material as made. The terms “elastic” and “elastomeric” are used interchangeably to mean a material that is generally capable of recovering its shape after deformation when the deforming force is removed. Specifically, as used herein, elastic or elastomeric is meant to be that property of any material which upon application of a biasing force, permits that material to be stretchable to a stretched biased length which is at least about 50 percent greater than its relaxed unbiased length, and that will cause the material to recover at least 40 percent of its elongation upon release of the stretching force. A hypothetical example which would satisfy this definition of an elastomeric material would be a one (1) inch sample of a material which is elongatable to at least 1.50 inches and which, upon being elongated to 1.50 inches and released, will recover to a length of not more than 1.30 inches. Many elastic materials may be stretched by much more than 50 percent of their relaxed length, and many of these will recover to substantially their original relaxed length upon release of the stretching force.

Glaug simply discloses elastic bands. The elastic bands happen to be colored in order to “color code” the garment to disquinish front from back. However, Claims 1, 15 and 27 each recite the limitation of a visual perception of a discrete elastic band where “no actual elastic band” is present. In Glaug, an actual elastic band is present, and therefore, does not disclose an apparent elastic band.

The term “apparent elastic band” is also defined on page 7 of the Application. The definition states specifically that an “apparent elastic band” is not an elastic band. The Glaug garment includes an elastic band, as previously stated. Thus, Glaug also fails to disclose or suggest an apparent elastic band.

Furthermore, Glaug does not disclose an apparent elastic band including a color pigment applied to a zone in a targeted elastic material to create a visible perception of a discrete elastic band where no actual band is present, because as previously discussed, Glaug does not disclose targeted elastic material, and also because an actual elastic band *is present*. Therefore, the claim limitation of “no actual elastic band” is not taught by Glaug, because in Glaug the elastic bands are real, not apparent. This distinction is akin to something that is real and tangible, as opposed to an illusion. Applicants’ claims require a visual perception, or an illusion, of a discrete elastic band without one being there, while in Glaug there is no illusion, but rather an actual elastic band.

As explained at page 3, lines 3-17, the elimination of a separately manufactured elastic band in garments reduces cost; however, because the use of visible, distinct elastic bands has gained widespread consumer acceptance, there is an incentive to at least maintain the perception of a visibly distinct elastic band where elastic properties exist. Applicants’ claimed invention, through the use of an apparent elastic band, creates the visible perception of a discrete elastic band, even though no such band is present. The added color pigment enhances the visible perception of a discrete elastic band, even though there is no actual elastic band.

Neither Mathis nor Glaug identify this need for an apparent elastic band, or any other use for an apparent elastic band. In fact, Glaug uses actual colored elastic bands, thus eliminating any need to create the **illusion** of an elastic band. There is no illusion of an elastic band if one is actually present.

Even if Mathis and Glaug could be combined, all of the elements of Applicants’ claims would not have been taught.

For at least the reasons given above, Applicants respectfully submit that the teachings of Mathis in view of Glaug fail to disclose or suggest Applicants’ claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**Information Disclosure Statements / Prior Art**

As indicated in prior filed Amendments under the subheading "Information Disclosure Statements," the Examiner has acknowledged all but one of the filed Information Disclosure Statements.

Applicants respectfully request the prior art references from the First Information Disclosure Statement, filed 05 June 2001 (with a Certificate of Mailing date of 29 May 2001), be made of record with the Examiner's acknowledgment of consideration of each of the references cited in the First Information Disclosure Statement. Copies of this First Information Disclosure Statement and the return receipt postcard dated 05 June 2001 are attached with the PTO Form 1449 pages. Also enclosed is a copy a Image File Wrapper history from the PAIR System which shows the Information Disclosure Statement received on 05 June 2001. This date matches the date on the postcard.

Applicants request that these references from the First Information Disclosure Statement be made of record.

**Conclusion**

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,



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**Attachments**

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